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Before the
Federal Communications Commission
Washington, D.C. 20554

DEC - 4 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
of the Rules (Table of Allotments))
(Barnwell, SC; Pembroke, GA;)
Douglas, GA; Willacoochee, **GA**))

MM Docket No 00-18
RM-9790

To. Chief, Media Bureau

BULLIE BROADCASTING CORPORATION'S REPLY

Bullie Broadcasting Corp. ("Bullie"), through counsel, hereby submits this brief Reply to the Opposition by Multi-Service Corporation ("Multi-Service Corp.") to Bullie's limited Petition for Reconsideration, filed November 4, 2002, of the staff's Memorandum Opinion and Order in this proceeding, DA 02-2224, released October 4, 2002 (the "MO&O"). The Multi-Service Corp. Opposition, according to the FCC's web site, was filed November 20, 2002, although the certificate of service attached to the Opposition is undated and the envelope received by Bullie's counsel is postmarked November 21, 2002. In any event, under the Rules, Multi-Service Corp.'s opposition is not due until fifteen days after notice of the filing of Bullie's petition in the *Federal Register* -- an event which has not, so far, occurred -- and Bullie's Reply is not due until ten days after the time for filing oppositions has expired. 47 C.F.R. §§ 1.4(b) and 1.429(e). Notwithstanding, in the interest of a prompt resolution of this proceeding, Bullie is filing its Reply at this time.

Bullie sought reconsideration insofar and to the extent that the MO&O imposed a novel and extraordinary condition on the grant at some time in the future of operating authority for WBAW-FM, currently operating at Barnwell, South Carolina, at its new

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community of license, Pembroke, Georgia. Specifically, in Paragraph 5 of the *MO&O*, the staff modified the *Report and Order* in this proceeding, *Barnwell, South Carolina, et al.*, 16 FCC Rcd 17860 (Mass Media Bur., 2001) (the "*R&O*"), "to the extent of withholding program test authority *and precluding special temporary authority* with respect to the reallocation of Channel 257C1 to Pembroke, Georgia, until the ultimate permittee of the Channel 256C3 allotment at Barnwell, South Carolina, commences operation." (Emphasis added.) Bullie showed, in its petition, that this condition goes beyond the conditions imposed on similar modifications of the FM Table of Allotments, that changes in the FCC's procedures for accepting, processing and granting applications for vacant FM allotments over the years have made such a condition both unduly burdensome and unnecessarily restrictive, and that the FCC has ample authority to assure, by other means, that a community is not left without a licensed local broadcast service for an extended period of time. Bullie also showed that Multi-Service Corp. lacked standing to file its petition for reconsideration of the original *Report and Order* in this proceeding and that the FCC had exceeded its authority by piggy-backing its extraordinary condition – beyond even the relief sought by Multi-Service Corp. – on a petition that should have been summarily dismissed.

Multi-Service Corp.'s Opposition asserts two grounds for denying Bullie's request for reconsideration. First, it claims that the condition imposed by the *MO&O* is "functionally and substantively equivalent" to the condition imposed in *Refugio and Taft, Texas*, 15 FCC Rcd 8497 (Mass Media Bur., 2000). That is manifestly *not* the case. *Refugio* did not specifically foreclose any grant of special temporary authority (as opposed to Program Test Authority). More to the point, Bullie, in its petition, showed that changes in the FCC's

procedures since *Refugio* make the *MO&O*'s interposition of additional obstacles to operation in a new community particularly inequitable. At the time of *Refugio*, a petitioner promising to apply for, construct, and operate on a "backfill" allotment was substantially in control of the process. It was, therefore, unlikely that construction of a backfill allotment would be unduly delayed, or delayed for reasons beyond the petitioner's control. Under the FCC's current procedures, however, constructing a station on a backfill allotment is subject to the opening of an application window, and the scheduling of an auction -- matters which are under the sole control of the FCC. And, moreover, the FCC has not provided an opportunity to file applications, or scheduled auctions of new FM allotments, for, literally, years -- and no filing windows or auctions for new FM allotments are on the horizon at any time in the foreseeable future. If special temporary authority is to be reflexively foreclosed in any and all circumstances, the effect is to subject parties to the power of the FCC's rule making authority (for example, by modifying the license of WDMG-FM to Willacoochee, Georgia, to accommodate the relocation of WBAW-FM to Pembroke) while potentially postponing the realization of any public interest benefit indefinitely, indeed rendering the possibility of any benefit to the public interest problematic. Such a result risks wasting the resources of both the parties and the FCC.

Multi-Service Corp.'s second argument is that its filing for reconsideration tolled the period within which the FCC was permitted to modify its order on its own motion and, seemingly, the fact that Multi-Service Corp. failed to request the imposition of the extraordinary condition is irrelevant. Multi-Service Corp. does not seriously contend that it had standing to file its petition for reconsideration. It asserts that it had standing merely

because it was a party to the original proceeding, by virtue of a counterproposal. That is not an argument: it **is** a tautology. It does not address the judicial requirements for standing cited in Bullie's petition, or show that Multi-Service Corp. stood to benefit in any way from the grant of its "petition." If it was true, as Multi-Service Corp. asserts, that the filing of any pleading, without regard to its procedural or substantive infirmities, is sufficient to confer upon the FCC a roving commission to search out and correct error in its decisions, then the concept of finality, and the reasonable expectations of parties in reliance thereon, are meaningless.

For the foregoing reasons, and the reasons stated therein, Bullie's Petition for Reconsideration should be granted, and the condition prohibiting the consideration of special temporary authority for the operation of WBAW-FM at Pembroke, Georgia, should be deleted.

Respectfully submitted,

BULLIE BROADCASTING
CORPORATION

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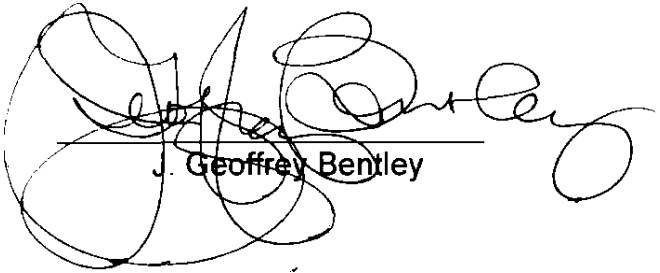
Its Attorney

December 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Reply to Opposition to Petition for Reconsideration to be served this 4th day of December 2002. by U.S. mail, postage prepaid, on the following:

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J. Geoffrey Bentley